

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DEARBORN AVENUE BISTRO, INC.,  
a Michigan corporation d/b/a BTs,

Plaintiff,

vs.

CASE NO. 04-CV-73900-DT  
HON. LAWRENCE P. ZATKOFF

THE CITY OF DEARBORN, a  
Michigan municipal corporation,

Defendant.

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**ORDER**

This matter is before the Court on Plaintiff Dearborn Avenue Bistro, Inc. d/b/a BTs (“BTs”): Motion to Amend/Correct Scheduling Order (Docket No. 28), Motion to Compel Witnesses for Deposition (Docket No. 29), and “First Interim Motion for Attorneys Fees” (Docket No. 35). Defendant City of Dearborn, Michigan has filed a response to each of Plaintiff’s Motions.

On December 8, 2005, this Court entered an Opinion and Order denying Defendant’s Motion for Summary Judgment. The Court also found that Defendant had denied Plaintiff its substantive due process rights. According to the Court’s docket, no appeal of the Court’s decision was made with respect to this case.

The Plaintiff’s Motion to Amend and Motion to Compel were filed prior to the Court’s December 8, 2005, Opinion and Order. Although not specifically addressed in the December 8, 2005, Opinion and Order, the Court believes that the Motion to Amend and Motion to Compel were rendered MOOT by the Opinion and Order. As such, Plaintiff’s Motion to Amend and Motion to Compel are hereby DENIED as moot.

Since the issuance of the December 8, 2005, Opinion and Order, however, the only filing in this case has been Plaintiff’s “First Interim Motion for Order Awarding Attorney Fees”). Although

the Court's finding that Plaintiff's substantive due process rights were denied by Defendant, no judgment or relief has been requested by Plaintiff (other than in its Complaint and Amended Complaint) or been granted. Plaintiff has not followed up on any of those requests and the case is simply lying dormant on the Court's docket. Therefore, the Court believes that it would be premature to address Plaintiff's Motion for Attorneys Fees.

For the reasons set forth above, the Court DENIES WITHOUT PREJUDICE Plaintiff's Motion for Attorney Fees. In addition, the Court hereby ORDERS Plaintiff to resume prosecution of this action or file a dismissal of this action within 30 days. At such time as this case has been resolved, the Plaintiff may re-file its Motion for Attorneys Fees or submit a new motion. Thereafter, the Court will address the issue of awarding attorney fees.

IT IS SO ORDERED.

Date: September 26, 2006

S/Lawrence P. Zatkoff  
LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

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